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February 24, 2012

VIA HAND DELIVERY AND ELECTRONIC MAIL

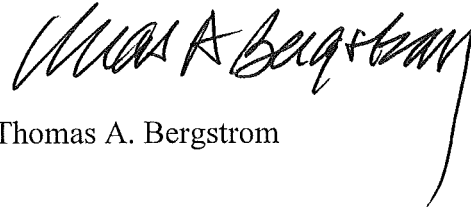
Honorable M. Teresa Sarmina
Court of Common Pleas
Room 258, City Hall
Philadelphia, PA 19107

Re: Commonwealth of Pennsylvania v. William Lynn
No.: CP-51-CR-0003530-2011
Commonwealth of Pennsylvania v. William Lynn
Supreme Court of PA Docket No. 7 EM 2012

Dear Judge Sarmina:

Enclosed please find a courtesy copy Defendant William Lynn's Motion to Dismiss, the original of which has been filed with the Court today and served on all parties.

Respectfully,



Thomas A. Bergstrom

TAB/lm
Enclosure

cc: (w/enclosure)
All Counsel
Monsignor William Lynn

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Attorneys for Defendant,
William Lynn

COMMONWEALTH OF PENNSYLVANIA	:	IN THE COURT OF COMMON PLEAS
	:	
	:	PHILADELPHIA COUNTY
	:	
v.	:	TRIAL DIVISION
	:	CRIMINAL SECTION
	:	
WILLIAM LYNN	:	NO.: CP-51-CR-0003530-2011

DEFENDANT WILLIAM LYNN'S MOTION TO DISMISS

COMES NOW, defendant William Lynn, by and through Counsel Thomas A. Bergstrom and Jeffrey M. Lindy, and moves this Court for an Order dismissing the case against him on the basis of newly discovered evidence.

From Monsignor Lynn's first testimony before the Grand Jury throughout the lengthy and ongoing pre-trial proceedings, the matter of his self-admitted review of all Archdiocesan secret archives has been a salient and reoccurring point, focused on by the prosecution and the Court alike as a key indicator of Monsignor Lynn's "guilty knowledge." However, the recent unexpected and shocking discovery of a March, 1994 memorandum composed by Monsignor

James Molloy, Monsignor Lynn's then-supervisor, on the topic of this review, clearly reveals that justice demands that all charges against Monsignor Lynn be dismissed.

Monsignor Lynn reviewed the secret archive files in early February 1994, less than two years after assuming office as Secretary for Clergy. He undertook this project on his own for the benefit of the faithful. The case of Father Dux spurred Monsignor Lynn to action. When allegations against Father Dux were brought to Monsignor Lynn's attention, he cross-referenced Dux's name with the secret archives and learned that Dux had a history of abuse. Concerned that the secret archives contained information about numerous other priests in active ministry, Monsignor Lynn wanted to do more.¹ Though never directed by Cardinal Bevilacqua to go through the entire secret archives, Monsignor Lynn felt it was the right thing to do. He wanted the Archbishop of Philadelphia to know about his findings and mandate follow-up actions. There were 323 priest files in the secret archives; of those 323 priests, Monsignor Lynn and Monsignor James Beisel, his then-assistant at the Office of Secretary for Clergy, culled out the names of 35 priests who had been involved in abusive conduct or were classified with a sexual disorder. Monsignor Lynn sent the list to his superior, Monsignor Molloy, in February of 1994. See Memorandum attached as Exhibit A. Up until recently, the list of 35 could not be located, even though Monsignor Lynn himself alerted the first Grand Jury (Grand Jury I) to its existence and, at the Grand Jury's request, Monsignor Lynn conducted an extensive search for the list. It was never produced to the Grand Jury. Monsignor Lynn has been accused by the

¹ Significantly, the February 18, 1994 cover memo to Monsignor Molloy that accompanied Monsignor Lynn's list of 35 also contained information about Father Dux, asking the Cardinal for the specific approval to put Father Dux into retirement. Cardinal Bevilacqua returned this cover memo with his signature and approval of the handling of Father Dux only. Unbeknownst to Cardinal Bevilacqua, Bishop Cullen, Bishop Cistone and Monsignor Molloy, Monsignor Lynn placed a copy of this cover memo, with the Cardinal's signature, in Father Dux's file. It is in this manner that the cover memo survived and informed the Commonwealth of the existence of this list of 35. This discovery serves as further proof of Monsignor Lynn's distance from the conspiracy to obstruct justice. It is obvious that had Monsignor Lynn been a part of this conspiracy, he would have immediately destroyed the copy of this cover memo in the Dux file – after all, he would immediately know that he would have placed it there by looking at it when the order to shred came down.

Commonwealth for failing to send this list up the chain of command and misleading the Commonwealth about its existence and whereabouts.

It now has come to light that, on Cardinal Bevilacqua's direction, Monsignor Molloy shredded all known copies of the list of 35 on March 22, 1994. Monsignor Molloy recorded this directive in a handwritten memorandum. His memorandum explicitly indicates that he was ordered to shred not only his copy of Monsignor Lynn's report, but also Cardinal Bevilacqua's copy, the file (original) copy and Bishop Cullen's copy. This shredding was witnessed by Bishop Cistone, who signed his name on Monsignor Molloy's memorandum. It is crucial to note that the memo reflects that the directive for the shredding came at a March 15, 1994 Issues Meeting attended by Cardinal Bevilacqua, Bishop Cullen and Monsignor Molloy.

It is beyond doubt that Monsignor Lynn was completely unaware of this act of obstruction. The record of this case clearly demonstrates that Monsignor Lynn was not invited to attend any full Issues Meetings, this one included, during Bishop Cullen's term as Vicar for Administration, a position the latter held until he assumed reign of the Diocese of Allentown in 1998. He was only occasionally permitted to come for short, discrete sections to bring specific case files, provide background or answer questions – as was the case on March 15, 1994. After fulfilling this brief request, he had to leave again. In fact, it was after Monsignor Lynn had brought up some files and left that the shredding discussion, memorialized by Monsignor Molloy's memorandum, occurred. This memo by Monsignor Molloy is attached hereto as Exhibit B. The memo was handwritten on Monsignor Molloy's February 18, 1994 typed memorandum to Cardinal Bevilacqua and copied to Bishop-elect Edward P. Cullen (with attachments) to accompany Monsignor Lynn's report. The handwritten portion states:

On 3-22-94 at 10:45AM I shredded, in the presence of Reverend Joseph R. Cistone, four copies of these lists from the secret archives:

1. the "file" copy ("original" received from the Office for Clergy)
2. my copy for discussion at Issues
3. Cardinal Bevilacqua's copy
4. Bishop-elect Cullen's copy

This action was taken on the basis of a directive I received from Cardinal Bevilacqua at the Issues Meeting of 3-15-94 (excerpt attached) and with the understanding that, as a result, the information will not be housed in the Office of the Vicar for Administration but could be obtained, if needed, from the Office for Clergy.

Monsignor James E. Molloy 3-22-94

Witnessed: Rev. Joseph R. Cistone 3-22-94

It is clear from these words that all known copies were to be destroyed, including the original that Monsignor Lynn would have kept for the file. It also is clear that the shredder did not know that a cover memo that accompanied and referenced this list was preserved in the Dux file. Otherwise, the shredder would have destroyed it as well. Furthermore, no copy of this document was to be housed anywhere in the Archdiocese, including the Office for Clergy. Rather, it was access to this information that Monsignor Molloy indicated was still available, if necessary. Should the Cardinal so request, Monsignor Lynn could always redo his investigation and analysis to regenerate such a list.

The manner in which this memo was discovered is as shocking as its contents. It was found in a locked cabinet in the Office of the Vicar for Administration on the 12th Floor of the Archdiocese building.² A complete picture of the events that surround this discovery remains elusive. Incomprehensibly and alarmingly, this discovery was not shared with any of the parties

² Monsignor Lynn's office in the Office of Secretary for Clergy was located on the 10th Floor of the building.

to this litigation until mere days ago. Unbeknownst to anyone else and in violation of the Cardinal's directive, Monsignor Molloy preserved a copy of this list in a different place – a safe to which no one else had a combination. The services of a locksmith had to be utilized to open the safe. General Counsel for the Archdiocese of Philadelphia, Timothy Coyne, testified to having received this list upon its extraction in 2006. Despite the ongoing investigation and trial and despite the fact that this list had been rigorously sought after during the 2003-2005 Grand Jury I, Mr. Coyne has failed to notify the Commonwealth or the defendants of this list. Both documents only became available to the parties last week, a mere week after the passing of Cardinal Bevilacqua.

This startling revelation raises clear issues as to whether Cardinal Bevilacqua, Bishops Cullen and Cistone and Monsignor Molloy obstructed justice in connection with Grand Jury I. It also provides a solid basis to question and reevaluate the current Grand Jury's presentment as it pertains to Monsignor Lynn. Had this recent Grand Jury been aware of the Cardinal's successful efforts in "deep sixing" a significant document prepared by Monsignor Lynn, its view of him as a potential defendant may have been entirely different. *See e.g. In re Investigating Grand Jury, Appeal of Krakower*, 500 Pa. 557, 459 A.2d 304 (1983) (which dealt with the quashing of a presentment and criminal complaints that were obtained because misleading evidence had been submitted to the grand jurors). It is clear from the Molloy memo, and the belated production, that Monsignor Lynn has been "hung out to dry." It is most certainly a viable argument that, had this been known by the Grand Jury and the District Attorney's Office, a different result respecting Monsignor Lynn would have been reached.

Significantly, all of the participants at this March 15, 1994 Issues Meeting who were aware of the shredding have testified before Grand Jury I. Not one of them has ever admitted

that he was aware of Monsignor Lynn's 1994 review and resulting list of problematic priests, despite direct questions about the topic and ample opportunities to bring it up. Mr. Coyne testified on February 16, 2012 that he asked Bishop Cullen, Bishop Cistone and Monsignor Molloy, whether directly or through their counsel, about the whereabouts of this list during Grand Jury I. Despite the evident urgency of Mr. Coyne's request, all three stated that they did not know where this list was. What is more, some perjured themselves during Grand Jury I. The following is an excerpt, attached hereto as Exhibit C, from the April 24, 2003 Grand Jury testimony of Monsignor James Molloy, the author of the above-referenced memo and the self-admitted shredder of four copies of Monsignor Lynn's report:

Assistant District Attorney: Okay. And, sir, we've gone over this before, but I just want to ask you one more time. To your knowledge, in the time that you were in the Office for the Vicar of Administration, did any of your colleagues shred any secret archives documents for the purposes of obstructing justice?

Monsignor Molloy: Not to my knowledge.

Assistant District Attorney: Okay. And did you yourself shred any secret archives documents for the purpose of obstructing justice?

Monsignor Molloy. Absolutely not.

Bishop Edward Cullen similarly misled the Commonwealth and kept the truth hidden. On November 13, 2003, Bishop Cullen provided the following testimony, summarized below in relevant part and attached hereto as Exhibit D.

Assistant District Attorney: In February of last year, 2002, the Archdiocese of Philadelphia indicated that there were thirty-five credible cases of sexual abuse of minors over the last fifty years in

the Archdiocese of Philadelphia. Were you aware of that announcement?

Bishop Cullen: No.

Assistant District Attorney: After that announcement and during that time period, approximately twelve priests were reassigned.

Bishop Cullen: After that announcement?

Assistant District Attorney: Yes. And during that time period, twelve priests in the Archdiocese of Philadelphia were reassigned, so they were in assignments at the time that this announcement was made. You follow what I'm saying?

Bishop Cullen: I do. I follow what you're saying.

Assistant District Attorney: Those twelve priests that had been into assignments prior to 2002, in the last thirty-five years?³

Bishop Cullen: Could have been. If that's what it is, it is.

Assistant District Attorney: Okay. And if they had allegations, credible allegations, were those credible allegations brought to your attention when you were making assignments?

Bishop Cullen: No.

Assistant District Attorney: Or advising the Cardinal about assignments?

Bishop Cullen: No. No. I just explained the process. No. It would not.

....

Assistant District Attorney: And you said earlier that no person was put on a list of being given a potential reassignment in the Archdiocese of Philadelphia if they had a past?

Bishop Cullen: That was – that was the guideline.

Assistant District Attorney: And what guideline are we referring to? Is this an oral guideline? Is this something that was written down?

³ The vast majority of the 2002 list of 35 and the subsequent list of 12 were overlaps with Monsignor Lynn's 1994 list of 35.

Bishop Cullen: It was -- I think it was more -- I don't remember it being written down, but I remember it being discussed.

Assistant District Attorney: And you were a part of the discussion?

Bishop Cullen: Yes. Yes.

Assistant District Attorney: And who else besides yourself was part of the discussion with regard to --

Bishop Cullen: Well, I know the Cardinal's indicated that someone who was inappropriate should not be reassigned and so did -- and that was communicated to Monsignor Lynn....

Testimony from January 23, 2004:

Assistant District Attorney: There could have been a piece of paper on the Cardinal's desk that listed out the priests that are in active assignments, that had past allegations in their secret archive files, so that every two or three months he could have had something to check himself and say: You know what. I better go and check and make sure. And I understand he had a diocese to run, but he could have had a checklist on his desk that, you know what, Father [Robert] Brennan, I'm going to make sure, see what's happening with him at Resurrections. Those types of things could have been done, correct?

Bishop Cullen: All kinds of things could have been done.

Bishop Cistone⁴, who signed his name as a witness to Monsignor Molloy's shredding, omitted informing the Commonwealth and the Grand Jury of this fact, despite a detailed questioning about a directly related topic- the 2002 reporting of 35 priests with credible allegations against them.

The following April 29, 2004 excerpt, attached hereto as Exhibit E, is instructive:

⁴ Bishop Cistone replaced Monsignor Molloy in the summer of 1994 and became the Vicar for Administration, replacing Bishop Cullen, in 1998.

Assistant District Attorney: The Archdiocese, when Cardinal Bevilacqua issued some press releases immediately after the Dallas Charter, he indicated that there were thirty-five cases of credible allegations against priests in the Archdiocese of Philadelphia, and you're familiar with those numbers; is that right?

Bishop Cistone: That's correct.

Assistant District Attorney: Okay. And are you familiar with where it was that Cardinal Bevilacqua got that information that he released to the public?

Bishop Cistone: That would have been supplied by the Secretary for Clergy.

Assistant District Attorney: Were you involved in any of the gathering of that data or the dissemination of that information to the public?

Bishop Cistone: No, I was not.

Assistant District Attorney: Okay.

Bishop Cistone: Oh, I was not involved in the gathering of the data.

...

Assistant District Attorney: When the press release was generated with regard to the number thirty-five over the past fifty years, what did you do to verify that the information being released to the public was accurate?

Bishop Cistone: I relied on Monsignor Lynn's information.

Assistant District Attorney: And who was it that gave the directive to Monsignor Lynn to gather that data?

Bishop Cistone: I can't recall how a directive came for that. It may have been in the discussion. I can't recall how – where the directive came from or... I just don't recall.

...

Assistant District Attorney: But to your knowledge, there was nothing done from either the Cardinal's office or your office to verify what Monsignor Lynn told you in terms of numbers?

Bishop Cistone: We relied on Monsignor Lynn in – no, we relied on Monsignor, on Monsignor Lynn.

...

Assistant District Attorney: When our office undertook the responsibility of impaneling a Grand Jury to look into this issue, we issued a subpoena to the Archdiocese of Philadelphia. You're aware of that, correct?

Bishop Cistone: Correct.

Assistant District Attorney: And that was seeking files maintained by the Archdiocese with regard to the issue of allegations of clergy sexual abuse, correct? Over a period of fifty years; is that correct?

Bishop Cistone: Correct.

Assistant District Attorney: And based upon our serving that subpoena, we received secret archive files of approximately a hundred and forty priests. Were you aware of that fact?

Bishop Cistone: I'm not aware of the exact number, no.

...

Assistant District Attorney: And do you know, to your knowledge, whether it was Monsignor Lynn himself that went through the files and came up with this thirty-five, or did he assign that task to others as well?

Bishop Cistone: I believe that legal counsel assisted him in that regard as well.

Without a doubt, this line of questioning presented a ripe opportunity for Bishop Cistone to explain that Monsignor Lynn had already conducted a similar investigation, producing an analogous report with many of the same names, in 1994. This was the perfect time to admit that Cardinal Bevilacqua thwarted Monsignor Lynn's efforts to do something about these priests eight years before the Dallas Charter and the Boston scandal. To rationalize Bishop Cistone's silence as an innocent mistake or lapse in memory would be an undeserved leap of faith.

Cardinal Bevilacqua also had plenty of opportunities while testifying before Grand Jury I to admit that he had received a report from Monsignor Lynn summarizing his review of the secret archive files, but that not only did he do nothing about the priests listed, he chose to have this evidence destroyed.

For example, on August 22, 2003, Cardinal Bevilacqua was asked:

Assistant District Attorney: Do you, Cardinal, believe that you were in any way negligent in the assignment or transfer of any priest who was accused of sexually abusing a minor?

Cardinal Bevilacqua: You asked the question was I aware. You mean knowingly? At no time knowingly did I say that I was negligent in assigning any priest.... I don't see how I could say that I was negligent in not knowing.

Testimony from June 26, 2003 (read to the Grand Jury on October 31, 2003):

Assistant District Attorney: When decisions concerning the assignment of priests who had allegations filed in the secret archive file were being discussed, did you or your staff review the contents of the secret archive file as well as the personnel file to assist you in making these decisions of assignment?

Cardinal Bevilacqua: Did I do it?

Assistant District Attorney: Yes.

Cardinal Bevilacqua: I did not.

Assistant District Attorney: Okay....Did you or your staff?

Cardinal Bevilacqua: Oh, or your staff. I presume my staff would review the file before they would make a recommendation.

See Exhibit F.

Not only did Cardinal Bevilacqua have knowledge of 35 priests with allegations of abusing minors as early as 1994, but he wanted to get rid of this evidence to mask his knowledge. Had Monsignor Lynn's counsel known about the Cardinal's action –which can only be interpreted as obstruction of justice - at the time of his private deposition in November, 2011,

they could have questioned the Cardinal about it. Without an opportunity to attempt meaningful cross examination of him and present him with evidence of his suppression of the truth, the Cardinal's testimony is rendered even more hollow and should be excluded.

New to the job in 1994, Monsignor Lynn was attempting to carry out his responsibilities relative to alleged sexual abuse. Unprompted by his Archbishop and with the assistance of Monsignor Beisel, Monsignor Lynn diligently reviewed the entire secret archives. The record reflects that Monsignors Lynn and Beisel reviewed these files as an addition to their daily responsibilities – staying on after hours in order to compile the list. On February 18, 1994, Monsignor Lynn dutifully sent the completed list to Monsignor Molloy, to be passed on to Cardinal Bevilacqua for his directive on follow-up actions. Monsignor Lynn's efforts to draw his superiors' attention to living priests with allegations of sexual abuse were only to be thwarted by the Cardinal's decision to shred the evidence. Obviously, no instructions on further actions in response to Monsignor Lynn's report ever came. Receiving no orders, Monsignor Lynn had no power to do anything else.⁵

As this newfound memorandum proves, the District Attorney's Office is entirely correct in its belief and assertion that an overarching Archdiocesan conspiracy existed in Philadelphia in the 1990s. Its participants were Cardinal Bevilacqua, Bishop Cullen, Bishop Cistone and Monsignor Molloy. Appallingly, none of these individuals are on trial. In fact, two of them – Bishop Cullen and the late Monsignor Molloy- received immunity from the District Attorney's Office during Grand Jury I. Ironically, the only Archdiocesan official on trial, with his freedom at risk and his good name besmirched, is Monsignor Lynn, who did the right thing and has never

⁵ The statutes of limitation for all allegations against each of the 35 priests named in the report have already run. Reporting these allegations to the police would have been fruitless.

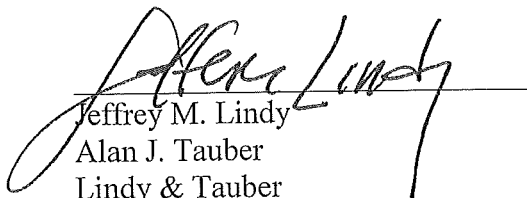
participated in this conspiracy. In light of the unmistakable conclusions revealed in Monsignor Molloy's memo, it would be a gross miscarriage of justice to continue to prosecute Monsignor Lynn.

WHEREFORE, Defendant William Lynn respectfully asks this Court to dismiss all charges against him.

Respectfully submitted,



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Date: February 24, 2012

EXHIBIT

A

CONFIDENTIAL

OFFICE OF THE SECRETARY FOR CLERGY

FROM THE DESK OF:

Reverend William J. Lynn

TO: Reverend Monsignor James E. Molloy
Assistant Vicar for Administration

FEB 18 1994

DATE: February 18, 1994

OFFICE OF THE VICAR
ADMINISTRATION

RE: Materials in Secret Archives

Father Beisel and I reviewed the 323 files that are presently stored in the Secret Archives. Attached is a list of priests who have been guilty of or accused of sexual misconduct with a minor according to the file material. We were very literal in our reading of the files in order to be as accurate as possible with this list.

From our review: a) three priests have been diagnosed as pedophiles; b) twelve priests have been either found guilty or admitted guilt of sexual misconduct with a minor; c) twenty priests have had allegations of sexual misconduct with minors made against them with no conclusive evidence to prove guilt. Only basic information is contained in this report so as not to have too much in writing on this matter. Also attached is a listing of extern priests who fit these categories and whom the Archdiocese has some awareness. The list of externs is provided to complete the picture.

Under separate cover, I will be making recommendations about the other files presently stored in the secret archives. Most have to do with alcoholics or priests who left the priesthood.

Of those listed on the attached sheets, my immediate concern is Father James Dux. Recently, I had a telephone call where the caller said that he had allegations to make against Father Dux which dated back some twenty years. I offered to meet with him. The caller said he was not sure of his schedule and would get back to me. To date, I have not heard from him. Father Dux will be seventy-two years old in November, 1994 and could be offered retirement.

RECOMMENDATION:

1. That the Secretary for Clergy meet with Father Dux, explain to him the atmosphere of our times regarding these matters, and offer him retirement at Villa Saint Joseph in Darby at the next available opening.

Approved
2/24/94

EXHIBIT B

Office of: Vicar for AdministrationTO:
FROM:
DATE:
RE:Anthony Cardinal Bevilacqua
Monsignor James E. Molloy *JEM*
18 February 1994
Materials in secret archives*Issues*

The enclosed report, of today's date, from Father Lynn is forwarded for your review in anticipation of discussion to be held at the Issues meeting scheduled for 21 February.

Attachment(s)

cc: Bishop-elect Edward P. Cullen (w/a)

On 3-22-94 at 10:45 AM I shredded, in the presence of Reverend Joseph R. Cistone, four copies of these lists from the secret archives:

1. the "file" copy ("original" received from the Office for Clergy)
2. my copy for discussion at Issue
3. Cardinal Bevilacqua's copy
4. Bishop-elect Cullen's copy.

This action was taken on the basis of a directive I received from Cardinal Bevilacqua at the above meeting of 3-15-94 (excerpt attached) and with the understanding that, as a result, the information was not be housed in the Office of the Vicar for Administration but could be obtained, if needed, from the Office for Clergy.

Monsignor James E. Molloy 3-22-94

*Witnessed: Rev. Joseph R. Cistone
3-22-94*

EXHIBIT C

18-10-107

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

IN RE: : MISC. NO. 01-00-8944
COUNTY INVESTIGATING :
GRAND JURY XVIII : C-10

April 24, 2003

Room 18013, One Parkway
Philadelphia, Pennsylvania

TESTIMONY OF REVEREND MONSIGNOR JAMES E. MOLLOY

APPEARANCES:

WILLIAM SPADE, ESQUIRE
Assistant District Attorney

MAUREEN MCCARTNEY, ESQUIRE
Assistant District Attorney

For the Commonwealth

Reported by: Charles Holmberg
Official Court Reporter

- 1 REVEREND MONSIGNOR JAMES E. MOLLOY
- 2 of your prior appearances before the grand jury, I believe
- 3 I showed you a document, and I can't remember what the
- 4 exhibit number was, but it was marked as an exhibit, and
- 5 it was a description of Cardinal Bevilacqua's meeting with
- 6 the parents of [REDACTED], who was a child who had
- 7 allegedly been abused by Father Brennan at Saint Ignatius
- 8 Parish, Yardley?
- 9 A. That must be the case then.
- 10 Q. Okay. So given the fact that Cardinal Bevilacqua
- 11 met on at least one occasion with the parents of a victim,
- 12 it is possible that he kept notes, his own personal notes
- 13 of that meeting?
- 14 A. Oh, yes. I would say it's highly probable.
- 15 Q. Okay. And, sir, we've gone over this before, but I
- 16 just want to ask you one more time.
- 17 To your knowledge, in the time that you were in the
- 18 Office for the Vicar of Administration, did any of your
- 19 colleagues shred any secret archives documents for the
- 20 purposes of obstructing justice?
- 21 A. Not to my knowledge.
- 22 Q. Okay. And did you yourself shred any secret
- 23 archives documents for the purpose of obstructing justice?
- 24 A. Absolutely not.
- 25 Q. Okay. I think you also testified on a prior

EXHIBIT

D

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

IN RE: : MISC. NO. 0300-239
COUNTY INVESTIGATING :
GRAND JURY XIX : C-1

November 13, 2003

Room 18013, One Parkway
Philadelphia, Pennsylvania

TESTIMONY OF BISHOP EDWARD P. CULLEN

APPEARANCES:

CHARLES F. GALLAGHER, ESQUIRE
Deputy District Attorney

WILLIAM SPADE, ESQUIRE
Assistant District Attorney

MAUREEN MCCARTNEY, ESQUIRE
Assistant District Attorney

For the Commonwealth

PRESENT:

JOSEPH F. LEESON, JR., ESQUIRE
For the Witness

Reported by: Charles Holmberg
Official Court Reporter

BISHOP EDWARD P. CULLEN

1
2 were viewed as suitable to be placed in a parish, then
3 Lynn's name, Lynn would have placed them as suitable in
4 there, either because there was no definitive proof that
5 they did it, what was -- what they were accused of or
6 maybe, I don't know, they were rehabbed and the
7 behaviorist said they're suitable.

8 If you go back far enough, they were saying they
9 were suitable or depends -- that would never be a criteria
10 you could use today, but back then it might have been. I
11 don't know.

12 But he was the filtering person for that. That
13 office was, whether it was Jagodzinski or him, to come up
14 with that, whether they're suitable or not, based on the
15 criteria that was available at that time.

16 Q. And you indicated you've always relied upon his
17 decision and Jagodzinski and you trusted that they were
18 making the right decisions?

19 A. Yes.

20 Q. In February of last year, 2002, the Archdiocese of
21 Philadelphia indicated that there were thirty-five
22 credible cases of sexual abuse of minors over the last
23 fifty years in the Archdiocese of Philadelphia.

24 Were you aware of that announcement?

25 A. No.

BISHOP EDWARD P. CULLEN

- 1
2 Q. Okay. After that announcement and during that time
3 period, approximately twelve priests were reassigned.
4 A. After that announcement?
5 Q. Yes. And during that time period, twelve priests
6 in the Archdiocese of Philadelphia were reassigned, so
7 they were in assignments at the time that this
8 announcement was made.
9 You follow what I'm saying?
10 A. I do. I follow what you're saying.
11 Q. Those twelve priests that had been into assignments
12 prior to 2002, in the last thirty-five years?
13 A. Could have been. If that's what it is, it is.
14 Q. Okay. And if they had allegations, credible
15 allegations, were those credible allegations brought to
16 your attention when you were making assignments?
17 A. No.
18 Q. Or advising the Cardinal about the assignments?
19 A. No. No. I just explained the process. No. It
20 would not.
21 Q. Now, as far as how these cases were handled during
22 the ten years that you were Vicar for Administration, what
23 was the policy as far as informing a parish about an
24 investigation of an allegation of sexual abuse of a minor
25 by a priest of that parish?

BISHOP EDWARD P. CULLEN

1
2 Q. And you said earlier that no person was put on a
3 list of being given a potential reassignment in the
4 Archdiocese of Philadelphia if they had a past?

5 A. That was -- that was the guideline.

6 Q. And what guideline are we referring to? Is this an
7 oral guideline? Is this something that was written down?

8 A. It was -- I think it was more -- I don't remember
9 it being written down, but I remember it being discussed.

10 Q. And you were part of the discussion?

11 A. Yes. Yes.

12 Q. And who else besides yourself was part of the
13 discussion with regard to --

14 A. Well, I know the Cardinal's indicated that someone
15 who was inappropriate should not be reassigned and so
16 did -- and that was communicated to Monsignor Lynn.

17 Now, there might have been something in memo form
18 given to him that's on record. I don't know. But it was
19 very clear, and I think he knows that and he knew that,
20 lived by it to my knowledge.

21 Q. Monsignor Lynn?

22 A. Yes.

23 Q. And he took over in '93, and the same would be
24 known and true the Cardinal was very concerned about
25 having people with pasts or problems in their background

1-1-1-93

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION

IN RE: : MISC. NO. 0300-239
:
COUNTY INVESTIGATING :
GRAND JURY XIX : C-1

January 23, 2004

Room 18013, One Parkway
Philadelphia, Pennsylvania

TESTIMONY OF BISHOP EDWARD P. CULLEN

(RE: REV. GANA, REV. BRENNAN, REV. TRAUGER, REV. WALLS)

APPEARANCES:

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Deputy District Attorney

WILLIAM SPADE, ESQUIRE
Assistant District Attorney

MAUREEN MCCARTNEY, ESQUIRE
Assistant District Attorney

For the Commonwealth

PRESENT:

JOSEPH F. LEESON, JR., ESQUIRE
For the Witness

Reported by: Charles Holmberg
Official Court Reporter

BISHOP EDWARD P. CULLEN

1
2 in accord -- as I see it, in accord with the canonical --
3 the canonical position he was in with this priest.

4 He didn't have anything canonically on him that was
5 criminal, and so his pastoral way of dealing with it kind
6 of was consistent while I was there and when I left
7 evidently, and that seems to be with all three cases.

8 Q. But again, Bishop, I don't want to belabor the
9 point, but there were assignments within the Archdiocese
10 of Philadelphia that did not necessarily mean that Father
11 Brennan with his past had to be put into a parish where
12 there was a school.

13 There were assignments where the possibility of
14 coming in contact with children could have been at least
15 limited, correct?

16 A. That's right.

17 Q. There could have been a piece of paper on the
18 Cardinal's desk that listed out the priests that are in
19 active assignments, that had past allegations in their
20 secret archive files, so that every two or three months he
21 could have had something to check himself and say: You
22 know what. I better go and check and make sure.

23 And I understand he had a diocese to run, but he
24 could have had a checklist on his desk that, you know
25 what, Father Brennan, I'm going to make sure, see what's

BISHOP EDWARD P. CULLEN

1
2 happening with him at Resurrection. Those types of things
3 could have been done, correct?

4 A. All kinds of things could have been done.

5 Q. And you would agree with me, Bishop, or maybe you
6 won't, and if you don't, please tell me, that by Father
7 Lynn's failure to act in the way that he did and his
8 failure to take the steps that he was told to take, to
9 inform the pastor to make sure that Father Brennan wasn't
10 around children, that there were children at Resurrection
11 Parish that were put in danger of Father Brennan?

12 A. (No response.)

13 Q. I understand danger exists everywhere, but with
14 regard to --

15 A. Yes. Yes. I think there's an endangerment there,
16 but yes. True. Sure.

17 Q. And Father Brennan, given his past, was a known
18 danger. This wasn't like somebody we never heard about
19 before. Given he was removed from Saint Ignatius, he was
20 removed from Saint Mary's, he was a known danger. He
21 presented a known danger, correct?

22 A. Yes, I understand. I understand his background and
23 that -- the danger that you're speaking of.

24 You still -- you know, from the Archbishop's
25 perspective, I think there was no criminal action that he

EXHIBIT E

19-1-156 ✓
IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION

IN RE:
COUNTY INVESTIGATING
GRAND JURY XIX

: MISC. NO. 0300-239
:
:
: C-1

④
April 29, 2004

Room 18013, One Parkway
Philadelphia, Pennsylvania

TESTIMONY OF MONSIGNOR JOSEPH R. CISTONE
(RE: Rev. Peter J. Dunne)
(RE: Rev. Francis X. Trauger)
(RE: Rev. Francis A. Giliberti)

APPEARANCES:

CHARLES F. GALLAGHER, ESQUIRE
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WILLIAM SPADE, ESQUIRE
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MAUREEN MCCARTNEY, ESQUIRE
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For the Commonwealth

PRESENT:

WILLIAM J. WINNING, ESQUIRE
For the Witness

Reported by: Charles Holmberg
Official Court Reporter

MONSIGNOR JOSEPH R. CISTONE

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2 A. That would not have been my experience in the cases
3 that we reviewed, that that was a directive or an issue or
4 a practice at that time.

5 Q. Well, did you ever on your own initiative bring it
6 up as something that you thought would be appropriate to
7 do?

8 A. No. No, I did not.

9 Q. Okay. To your knowledge, did Bishop Cullen ever
10 engage in conversation where he expressed his opinion that
11 that would be something that was appropriate to do?

12 A. I don't recall that happening, no.

13 Q. Do you think speaking now, do you think that that's
14 an appropriate action to take with regard to informing the
15 parishioners?

16 A. Yes, and because it is an action that we took.

17 Again, you know, we look back what -- say what we
18 do now as distinct from what we might have done then, so
19 yes, I do, and because the parishes have been notified
20 where the priest has been active.

21 Q. Okay. Let's talk for just a moment about that.

22 The Archdiocese, when Cardinal Bevilacqua issued
23 some press releases immediately after the Dallas Charter,
24 he indicated that there were thirty-five cases of credible
25 allegations against priests in the Archdiocese of

MONSIGNOR JOSEPH R. CISTONE

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2 Philadelphia, and you're familiar with those numbers; is
3 that right?

4 A. That's correct.

5 Q. Okay. And are you familiar with where it was that
6 Cardinal Bevilacqua got that information that he released
7 to the public?

8 A. That would have been supplied by the Secretary for
9 Clergy.

10 Q. Were you involved in any of the gathering of that
11 data or the dissemination of that information to the
12 public?

13 A. No, I was not.

14 Q. Okay.

15 A. Oh, I was not involved in the gathering of the
16 data.

17 Q. Okay.

18 A. In terms of the press releases and so on, I would
19 have been a part of the process of -- you know, of
20 producing those press releases.

21 Q. Okay. So then part of your responsibility as Vicar
22 for Administration would have been to be involved in press
23 releases that the Cardinal had in the Archdiocese,
24 correct?

25 A. I would have been a part of a review process for

MONSIGNOR JOSEPH R. CISTONE

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2 that. Yes.

3 Q. When the press release was generated with regard to
4 the number thirty-five over the past fifty years, what did
5 you do to verify that the information being released to
6 the public was accurate?

7 A. I relied on Monsignor Lynn's information.

8 Q. And who was it that gave the directive to Monsignor
9 Lynn to gather that data?

10 A. I can't recall how a directive came for that. It
11 may have been in the discussion. I can't recall how --
12 where the directive came from or . . . I just don't
13 recall.

14 Q. Did Monsignor Lynn just give you a memo that said
15 there's thirty-five cases, or did he provide you with the
16 background and the names of the thirty-five that he was
17 referring to?

18 A. He gave a number, and if I recall, it was in a
19 discussion that we had. It would have been a table
20 discussion with the -- with different parties present for
21 his Eminence, perhaps our communications person.

22 He gave the number, but no names. I mean, that's
23 where the number would have come from, from Monsignor
24 Lynn, as an estimate of where you -- or you know, as a
25 number of cases.

MONSIGNOR JOSEPH R. CISTONE

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2 A. Correct.

3 Q. And you were aware that this was a topic that the
4 public was very concerned about and had some serious
5 questions about, correct?

6 A. Correct.

7 Q. And so you understood the significance of what the
8 Cardinal said and how that would be taken by the
9 parishioners of the Archdiocese of Philadelphia, correct?

10 A. Correct.

11 Q. But to your knowledge, there was nothing done from
12 either the Cardinal's office or your office to verify what
13 Monsignor Lynn told you in terms of numbers?14 A. We relied on Monsignor Lynn in -- no, we relied on
15 Monsignor, on Monsignor Lynn.16 Q. And there was no discussion to your knowledge that
17 took place between either yourself or the Cardinal and
18 Monsignor Lynn with regard to how we're going to define
19 the term credible?20 A. I would have to -- I cannot pinpoint any particular
21 conversation. I know that the question of language was
22 always out there in terms of credible . . . like
23 verifiable, credible, true. There are lots of different
24 phrases that are used.

25 Cardinal Bevilacqua was of the mind of using the

MONSIGNOR JOSEPH R. CISTONE

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2 phrase "credible," and that's -- that's how -- that was
3 the phrase that was used based on -- based on the
4 information that Monsignor Lynn gave.

5 Q. And the information that he gave was just
6 thirty-five, right?

7 I mean, to your memory, it wasn't. Here's how I'm
8 coming up with this number. Here's how I went through the
9 files. Here's how I looked at them?

10 A. No. We relied on Monsignor Lynn's numbers as he
11 presented it to us.

12 Q. When our office undertook the responsibility of
13 impaneling a grand jury to look into this issue, we issued
14 a subpoena to the Archdiocese of Philadelphia. You're
15 aware of that, correct?

16 A. Correct.

17 Q. And that was seeking files maintained by the
18 Archdiocese with regard to the issue of allegations of
19 clergy sexual abuse, correct? Over a period of fifty
20 years; is that correct?

21 A. Correct.

22 Q. And based upon our serving that subpoena, we
23 received secret archive files of approximately a hundred
24 and forty priests.

25 Were you aware of that fact?

MONSIGNOR JOSEPH R. CISTONE

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2 A. I'm not aware of the exact number, no.

3 Q. Okay. And that's why the questions are being asked
4 with regard to a hundred and forty files, some of which
5 contain multiple allegations, and the number that the
6 Cardinal publicly said to the parishioners of thirty-five
7 credible allegations.

8 Do you know why the difference in those numbers?

9 A. Can I -- perhaps there would be at least one
10 distinction of religious priests as well as diocesan
11 priests? I'm --

12 Q. I will say to you, Monsignor, that we did receive
13 some files on diocesan -- I mean on order priests as well.

14 A. Order priests?

15 Q. Yes.

16 A. Which we would -- which would not have been a part
17 of that.

18 Q. Okay.

19 A. And then -- and in terms -- I mean, in terms of the
20 total number, I didn't see all the cases I don't know
21 them.

22 I think some of them may have been involved with
23 priests who are deceased, in which case it's -- in which
24 case Monsignor Lynn was of the mind that, you know,
25 there's no way of proving credibility or noncredibility in

MONSIGNOR JOSEPH R. CISTONE

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2 those cases where the priest was deceased.

3 Q. Well, let me just stop you right there, if I may.

4 How do you know that was in his mind if you never
5 had a discussion about what it was he was using to
6 determine credibility?

7 I mean, was that part of -- was that a discussion,
8 that we're not going to include dead priests, or are you
9 guessing?

10 A. No. No. No. It was determined not to include
11 deceased priests, so . . .

12 Q. So then I'm asking you, Monsignor: There was a
13 discussion with regard to how these files were to be gone
14 through and what criteria was going to be used in coming
15 up with an ultimate number to release publicly?

16 A. Beyond living and deceased, I don't know of any
17 other criteria, I mean, like in terms of how an allegation
18 was judged, I don't know that we had a discussion
19 specifically about those criteria.

20 I mean, if I misspoke in terms of living and
21 deceased, but I -- but aside from that, in terms of the
22 living priests, what were the characteristics or the
23 qualifications, I don't recall any discussion as to how
24 that was filtered out.

25 Q. And do you know, to your knowledge, whether it was

MONSIGNOR JOSEPH R. CISTONE

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2 Monsignor Lynn himself that went through the files and
3 came up with this thirty-five, or did he assign that task
4 to others as well?

5 A. I believe that legal counsel assisted him in that
6 regard as well.

7 Q. Legal counsel meaning Stradley, Ronon?

8 A. Stradley, Ronon.

9 Q. Clark Hodgson in particular, to your knowledge?

10 A. I don't know.

11 Q. Okay.

12 A. You know, he worked with Stradley, Ronon.

13 Q. And what are you basing that statement on, that
14 legal counsel went through the files with him to make that
15 determination?

16 A. Excuse me. Can I just confer.

17 Q. Sure. Absolutely.

18 (The witness conferred with his
19 attorney.)

20 MR. WINNING: Maureen, can I talk to
21 you.

22 MS. MCCARTNEY: Sure.

23 (A conference was held out of the
24 presence of the witness and the grand jury.)

25 (The witness conferred with his

EXHIBIT

F

✓
18-10-74

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

IN RE: : MISC. NO. 01-00-8944
COUNTY INVESTIGATING :
GRAND JURY XVIII : C-10

August 22, 2003

Room 18013, One Parkway
Philadelphia, Pennsylvania

TESTIMONY OF ANTHONY JOSEPH CARDINAL BEVILACQUA

APPEARANCES:

Not reading
2/10/10

MAUREEN MCCARTNEY, ESQUIRE
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MARIANNE E. COX, ESQUIRE
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WILLIAM SPADE, ESQUIRE
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For the Commonwealth

PRESENT:

C. CLARK HODGSON, JR., ESQUIRE
For the Witness

Reported by: Charles Holmberg
Official Court Reporter

ANTHONY JOSEPH CARDINAL BEVILACQUA

1
2 A. I said we don't have any -- you know, did not at
3 that time have any kind of set safeguards. We just
4 presumed that the whole environment of the rectory, you
5 know, presented little risk to those working there.

6 You always have in a rectory, you know, a number of
7 people working there, whether it be the housekeepers,
8 cooks, other priests at times, but I -- we always presumed
9 on the goodness of the priests themselves.

10 Q. Can I just have a moment.

11 (Pause.)

12 Do you, Cardinal, believe that you were in any way
13 negligent in the assignment or transfer of any priest who
14 was accused of sexually abusing a minor?

15 A. You asked the question was I aware. You mean
16 knowingly? At no time knowingly did I say that I was
17 negligent in assigning any priest.

18 Q. Do you think, Cardinal, that you are in any way or
19 were in any way negligent in not knowing that Monsignor
20 Walls had abused a minor and to have assumed that it was
21 not a minor?

22 A. I don't see how I could say that I was negligent in
23 not knowing.

24 Q. Why would you accept anyone into your diocese for a
25 full ministry who had been criminally charged with sexual

14

109-1-14

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

IN RE:

COUNTY INVESTIGATING
GRAND JURY XIX

: MISC. NO. 01-00-8944
:
:
: C-1

October 31, 2003

Room 18013, One Parkway
Philadelphia, Pennsylvania

TRANSCRIPT TESTIMONY OF ANTHONY JOSEPH CARDINAL BEVILACQUA
(Taken on June 26, 2003)

APPEARANCES:

CHARLES F. GALLAGHER, ESQUIRE
Deputy District Attorney

WILLIAM SPADE, ESQUIRE
Assistant District Attorney

MAUREEN MCCARTNEY, ESQUIRE
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For the Commonwealth

Reported by: Charles Holmberg
Official Court Reporter

VOLUME III

TESTIMONY OF ANTHONY JOSEPH CARDINAL BEVILACQUA

1 TESTIMONY OF ANTHONY JOSEPH CARDINAL BEVILACQUA
2 "Q. But since 1989, you've had regional vicars?

3 "A. I do.

4 "Q. And how often do you meet with them?

5 "A. I meet them about four times a year.

6 "Q. And do you meet them collectively, all the
7 regions?

8 "A. Yes.

9 "Q. Now, at these meetings, do you ever discuss the
10 reassignment of priests based on previous sexual
11 allegations of abuse of minors?

12 "A. I never recalled that being discussed at any of
13 those meetings.

14 "(Pause.)

15 "Q. When decisions concerning the assignment of
16 priests who had allegations filed in the secret archive
17 file were being discussed, did you or your staff review
18 the contents of the secret archive file as well as the
19 personnel file to assist you in making these decisions of
20 assignment?

21 "A. Did I do it?

22 "Q. Yes.

23 "A. I did not.

24 "Q. Okay."

25 MR. SPADE: 

TESTIMONY OF ANTHONY JOSEPH CARDINAL BEVILACQUA

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3

(THE WITNESS:) "Oh, excuse me."

4

(BY MR. GALLAGHER:)

5

"Q. Did you or your staff?

6

"A. Oh, or your staff.

7

"I presume my staff would review the file before

8

they would make a recommendation.

9

"Q. Okay. And what I'm talking about here, Cardinal,

10

is an allegation was made maybe during Cardinal Krol's

11

reign, and then subsequent to that, there was an

12

investigation and there was a secret archives file opened

13

on a particular priest, and he was given a new assignment,

14

maybe a restricted ministry or full ministry. That's

15

happened, correct?

16

"A. I don't recall that.

17

"Q. You don't recall ever assigning someone to a new

18

assignment who had previous allegations against him?

19

"A. No. You said full ministry.

20

"There's a difference between restricted and full

21

ministry.

22

"By restricted ministry -- by full ministry would

23

be any ministry. It could be anything, but including that

24

in a parish or a facility that has children, I don't

25

recall that.

CERTIFICATE OF SERVICE

I, Thomas A. Bergstrom, hereby certify that on February 24, 2012, I caused to be served a true and correct copy of the foregoing Motion to Dismiss by electronic mail and United States first class mail, postage prepaid, upon the following:

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Thomas A. Bergstrom